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GABLE & GOTWALS				
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TULSA, OK 74103				
EXAMINER				
DOUYON, LORNA M				
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1796				
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04/29/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/579,167

**Applicant(s)**

AINSCOW ET AL.

**Examiner**

Lorna M. Douyon

**Art Unit**

1796

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 18-19, 25-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date 5/12/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-15, 18-19, 25-26, drawn to a composition located in a single compartment of an aqueous sensitive device, or a water soluble sachet, classified in class 510, subclass 220.
  - II. Claims 20-24, drawn to a method of manufacturing a composition, classified in class 510, subclass 406.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case product as claimed can be made by another and materially different process such as mixing followed by grinding.
3. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:
  - (a) the inventions have acquired a separate status in the art in view of their different classification;

- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. During a telephone conversation with Atty. Chad Hinrichs on April 24, 2009 a provisional election was made **without** traverse to prosecute the invention of Group I, claims 1-15, 18-19, 25-26. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Objections***

6. Claims 1-15, 18-19, 25-26 are objected to because of the following informalities: in each of these claims, the term "characterized" is misspelled. In addition, in each of claims 1 and 18, the term "stabilizing" (see line 4 in claim 1; line 5 in claim 18) is misspelled. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 1-5, 10, 13-15, 25-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Bone et al. (US Patent No. 7,083,047), hereinafter "Bone".

Bone teaches a water soluble package for containing a fabric treatment composition, such as a rinse treatment composition (see col. 1, lines 6-9), which comprises 22.8 wt% dihardened tallow dimethyl ammonium chloride (which reads on the aqueous sensitive component); 39.2 wt% Sirius M85, which is a branched mineral oil having an average molecular weight of 288; 15.0 wt% ER 290, which is an esterified sucrose erucate (which reads on the gelling agent); 10 wt% hexylene glycol (which also reads on the aqueous sensitive component); 6 wt% Tergitol 15-S-7, a secondary alkyl alcohol with an average degree of ethoxylation of 7 (which reads on the emulsifying agent); 4 wt% perfume and 3 wt% water (see Composition 2 in col. 20, lines 43-57). The mineral oils include branched or straight chain hydrocarbons (e.g. paraffins) having 8 to 35, more preferably 9 to 20 carbon atoms in the hydrocarbon chain (see col. 19, lines 1-13). The compositions may also contain optional ingredients like enzymes (see col. 20, lines 21-31). Even though Bone does not teach a dishwashing use of his composition, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craig*, 89 USPQ 393. Hence, Bone anticipates the claims.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bone as applied to the above claims.

Bone teaches the features as described above. In addition, Bone also teaches that the oily sugar derivatives, like the polyester of sucrose may also be present in the composition in an amount from 0.001 to 10 wt%, more preferably 0.01 to 5 wt% (see col. 15, lines 53-61). Bone, however, fails to disclose the amount of the sugar derivative (gelling agent) in amounts as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the gelling agent of Bone through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected



results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F2d 454,456,105 USPQ 233,235 (CCPA 1955).

12. Claims 1-11, 13-15, 18-19, 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 2002/0142930), hereinafter "Smith".

Smith teaches a unit dose of detergent product having one or more dishwashing compositions in liquid, gel, paste form, which are substantially anhydrous, and the unit dose includes sachet or pouches having single or multiple compartments (see paragraph [0012] on page 2). In one embodiment, the anhydrous dishwashing composition is in the form of a particulate bleach suspension in a non-aqueous liquid carrier (see paragraph [0016] on page 2). Particulate bleaches suitable for use include inorganic peroxides like percarbonates (see paragraph [0020] on page 2) and chlorine bleaches (see paragraph [0056-0057] on page 5). In preferred embodiments, the dishwashing composition included in the unit dose form comprises a deterative enzyme (see paragraph [0022] on page 3). Bleach precursors and bleach catalysts (i.e., bleach activators) are also added (see paragraph [0057] on page 6). The composition also contains low cloud point non-ionic surfactants (see paragraph [0058-0059] on page 6, in amounts like for example, 5.6 wt% or 4.6 wt% (see paragraph 0076 on page 7). Other suitable components include organic polymers (which read on gelling agents) in levels from about 0.1% to about 30% by weight of the composition (see paragraph [0067] on

page 6). The composition can contain a corrosion inhibitor like paraffin in levels of from about 0.05% to about 10% by weight of the composition (see paragraph [0069] on page 6). Other suitable components include optical brighteners and perfumes 9see paragraph [0070] on page 7). Smith, however, fails to specifically disclose a unit dose single compartment containing a composition which comprises bleach, enzyme, mineral oil, nonionic surfactant and gelling agent in amounts as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared a unit dose single compartment containing a composition which comprises bleach, enzyme, mineral oil, nonionic surfactant and gelling agent in their optimum proportions because the teachings of Smith encompass these components and proportions thereof. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

13. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith as applied to the above claims, and further in view of MacQueen et al. (US 6,268,466), hereinafter "MacQueen".

Smith teaches the features as described above. Smith, however, fails to disclose a tertiary amide terminated polyamide gelling agent.

MacQueen teaches a tertiary amide terminated polyamide gelling agent useful in formulating personal care products and other articles (see abstract) like household products such as household cleaners (see col. 11, lines 17-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the gelling agent of Smith with the tertiary amide terminated polyamide gelling agent of MacQueen because the substitution of one gelling agent for another is likely to be obvious when it does no more than yield predictable results.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/  
Primary Examiner, Art Unit 1796